



POLICE DEPARTMENT

October 11, 2011

MEMORANDUM FOR: Police Commissioner

Re: Sergeant Robert Patelli
Tax Registry No. 893500
Emergency Service Squad 7
Disciplinary Case No. 2010 2293

The above-named member of the Department appeared before me on June 21, 2011, charged with the following:

1. Said Sergeant Robert Patelli, while off-duty, in [REDACTED] New York, on or about July 28, 2010, did engage in conduct prejudicial to the good order, efficiency and discipline of the Department in that said Sergeant did engage in a physical altercation with Person A.

P.G. 203-10, Page 1, Paragraph 5 PROHIBITED CONDUCT
GENERAL REGULATIONS

2. Said Sergeant Robert Patelli, while off-duty, in [REDACTED] New York, on or about and between June 8, 2010 and July 28, 2010, having been involved in a police incident, did thereafter fail to promptly notify the Operations Unit, as required.

P.G. 212-32, Page 1, Paragraph 2 OFF DUTY INCIDENTS INVOLVING
UNIFORMED MEMBERS OF THE SERVICE
COMMAND OPERATIONS

The Department was represented by Rita Bieniewicz, Esq., Department Advocate's Office, and Respondent was represented by John D'Alessandro, Esq.

COURTESY • PROFESSIONALISM • RESPECT

Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent is found Guilty.

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department called Sergeant Cynthia Diaz as its sole witness.

Sergeant Cynthia Diaz

Diaz, a 12-year member of the Department, testified that she has been assigned to the Special Operations Division (SOD) Investigation Unit for the past three years. Her duties include investigating reports of violations of the Patrol Guide and reports of domestic disputes.

On July 29, 2010, Diaz' supervisor, Lieutenant Fernandez, informed her of a domestic incident call regarding Respondent and [REDACTED] Person A (Person A). Diaz immediately responded to the couple's residence and conducted a tape-recorded interview of Person A. [The transcript of this interview was admitted into evidence as Department's Exhibit (DX) 1]. At this interview, Person A told Diaz that on July 28, 2010, after she and Respondent had argued about "meatloaf and side dishes," she told him, "One of these days I'm going to stab you in the back." Respondent told her, "Let's not

wait for someday.” He then grabbed her by the neck, threw her onto the floor and straddled her, until their four children screamed at him to get off of her. Respondent then entered the basement area of the house. Person A locked the door to the basement so that he could not get out. After a couple of hours, Respondent exited the basement by breaking the door off of its hinges. Respondent then left the house and went to work. Person A did not call 911 or seek any medical attention, but she telephoned Respondent’s command and the “Emergency Service Unit wheel.” She spoke to Detective Michael O’Brien and told him that she did not want Respondent to come home.

Diaz ascertained that sometime after midnight, Respondent notified Captain Galvin that he had been involved in an incident with Person A on the previous day. Galvin prepared an Unusual Occurrence Report. Diaz stated that Respondent’s notification to Galvin did not satisfy the Patrol Guide requirement that he promptly call the Operations Unit to report the incident. Diaz noted that although the incident took place at about 6:00 p.m., Respondent did not report it to Galvin until after midnight.

On July 29, 2010, Respondent was arrested for menacing and harassment by police officers assigned to [REDACTED] Police Department’s ([REDACTED] PD) 2nd Precinct. Diaz ascertained that these criminal charges were dismissed and sealed.

Person A also told Diaz that on June 8, 2010, she had called 911 because of a verbal argument between her and Respondent. The [REDACTED] PD report regarding the police response to this 911 call was admitted into evidence (DX 2).

On November 24, 2010, Diaz conducted an official Department interview of Respondent. At this interview, Respondent stated that on July 28, 2010, Person A told him she would stab him in the back one day and that she may have picked up a knife.

Because he believed that she was losing control, he grabbed her by her wrists and told her to calm down in front of the children. While he was grabbing her wrists, they fell to the floor and he fell on top of her. Respondent denied that he had put his hands around Person A's neck. He stated that he went to the basement to remove himself from the situation and to regain his composure before reporting for his tour of duty.

Diaz questioned Respondent about a June 8, 2010, call made to 911 from a telephone inside the Patelli residence. The caller had hung up the phone without saying anything to the SCPD operator. Respondent stated that one of his children had learned about 911 in school and had phoned 911 from home to try it out.

On cross-examination, Diaz testified that under the Patrol Guide the term "unusual police occurrence" is broadly defined and includes an unusual occurrence that results in a police response, such as a domestic incident where police are called to the residence. Diaz agreed that on July 28, 2010, [REDACTED] PD was not called to the Patelli residence. Diaz also agreed that Person A never asked her to call [REDACTED] PD regarding this incident. She further agreed that Person A had told her that although she and Respondent were [REDACTED], they have an amicable relationship and work together regarding raising their children.

On redirect examination, Diaz opined that Person A's calls to Respondent's supervisor and to the Emergency Services Unit, were the equivalent of calling the police and that an incident can rise to the level of an unusual police occurrence even if the police are not called. She testified that if a uniformed member of the Department and a spouse place "a hand on each other, the uniformed member of the service is required to notify the Operations Unit" even if no call has been made to 911.

On further examination, Diaz agreed that Person A did not call the police at about 6:00 p.m., the time the incident took place, and that Person A did not want Respondent to be arrested. Diaz agreed that Person A had called the Emergency Services Unit and Respondent's command to make a complaint because she did not want Respondent to come home, not to have Respondent punished or to have any action taken against him.

Respondent's Case

Respondent testified in his own behalf.

Respondent

Respondent, a 24-year veteran of the Department, recalled that on July 28, 2010, he:

had a disagreement with Person A over contents of dinner, which I am pretty embarrassed about, but you know, those are the breaks. And she became very irate and out of control and started screaming at the top of her lungs as she has done in the past, but this time it was even more intense. I went into the house to get away from her, because we were having dinner outside, to alleviate my neighbors from the commotion, and she started throwing things at me. I went into a different room to get away from her, then I went to the refrigerator to see if there was something that I [could] just grab quick to eat for dinner and go downstairs into the basement, at which time she said, "One of these days I'm going to stab you" or "I should stab you in the back," something to that effect, and I heard the sound of like an object hitting the counter. I looked and I saw there was a knife up there, and you know, I was asking her to control herself numerous times prior to her picking up the knife, but when she picked up the knife I grabbed her by the wrists and I asked her if she would control herself please in front of the kids. She struggled, we fell to the ground ... I got up off her and went down into the basement and stayed there for approximately three hours until I went to work.

Respondent testified that he did not consider calling the police during this incident and that Person A did not call the police during the incident. [REDACTED]

[REDACTED] He also stated that he has "been out of the house since the incident for obvious reasons. You know, we have been getting along better for the benefit of the kids." He testified that he did not call [REDACTED] PD on July 28, 2010, because he did not think the incident rose to the level where it would be necessary to do so.

Respondent further stated that "granted this was, you know, not your every day argument, but...Person A has had emotional problems for quite a few years now and I was kind of used to this." When he went to work, he "was going to make some notification regarding [the incident]." He wasn't "familiar with the procedure regarding making notifications, but making notifications crossed [his] mind on the way going to work." He intended to speak with "whoever the SOD captain was that night" and he did speak with Galvin about the incident. Galvin subsequently made a report.

Regarding the 911 call to [REDACTED] PD on June 8, 2010, Respondent recalled that [REDACTED] PD police officers responded to his home. They asked him if anyone had called 911. He told the officers that his daughter was learning about 911 in school and that perhaps she had called. Respondent could not recall whether or not he and Person A had an argument that day. He noted that arguments between them were a fairly common occurrence during the summer of 2010.

On cross-examination, Respondent recalled that he left his home to commute to his command at about 2100 hours on July 28, 2010. His tour of duty commenced at 2200. He arrived for his tour early, changed into his uniform, signed in, and then

responded to an assignment in the field. Respondent did not see Galvin until after the field assignment was over. As soon as Respondent saw him, he told Galvin what had happened. He did not tell him before then because he "had a priority with the job."

Respondent stated that Galvin was the first supervisor he informed about the incident. Before he told Galvin, he received a call from Detective Michael O'Brien who informed him that Person A had called the command. Also, Person A had called him and told him that she was still irate and did not want to talk to him. Respondent acknowledged that he did not tell any member of the Department about the incident until after he found out that Person A had called his command.

Respondent conceded that during the incident, he did not actually see Person A pick up a knife. He assumed that she had picked up a knife based on the noise that he heard which sounded like she had dropped a knife. Respondent stated that at the time of this incident, their four children were ages eight, six, five and three. Respondent reiterated that when he grabbed Person A by the wrists, he "asked her to control herself after asking her numerous times before that." The two of them wound up on the floor. Their four children "witnessed this whole, you know, fiasco, if you want to call it that."

Respondent remained in the basement for about three hours before he went to work. He asked Person A "about ten times" to open the door because he had to get his firearm, shield and keys to go to work, but, because she would not open the door, he had no choice other than to knock the door off of its hinges. Respondent stated that it never occurred to him while he was in the basement to call the Operations Unit to notify them that he had gotten into a physical dispute with Person A. He stated that he never intended

to get into a physical altercation with Person A. He merely wanted her to realize what she was doing in front of the kids and physically control her.

On redirect examination, Respondent testified that the reason he did not call the Operations Unit was because he had "been dealing with" with Person A's emotional difficulties for some time and because he had to report for work that night. He further explained that he had intention of going home after his tour. He had been out of the house before during similar occurrences. Neither he nor Person A was injured in the altercation. He told Galvin about the incident because he was seeking to fulfill his notification requirements. On re-cross-examination, Respondent recalled that Person A had threatened to call 911 before he went to the basement. He later learned that she did not make good on this threat because she did not call 911 on July 28, 2010.

FINDINGS AND ANALYSIS

Specification No. 1

It is charged that while Respondent was off duty inside his home in [REDACTED] New York, on July 28, 2010, he engaged in conduct prejudicial to the good order, efficiency and discipline of the Department by engaging in a physical altercation with his spouse Person A. Person A told Diaz that she and Respondent argued; that she told him, "One of these days I'm going to stab you in the back;" that he told her, "Let's not wait for someday;" and that he grabbed her by the neck, threw her onto the floor and straddled her. Respondent asserted on direct examination that he had grabbed Person A's wrists because she had picked up a knife, and that he did not throw her to the floor, rather, she "struggled" with him and they fell to the floor. However, on cross

examination, Respondent admitted that he did not actually see Person A holding a knife and that he had simply assumed that she had picked up a knife because he heard a noise which sounded like a knife falling to the floor. Moreover, Respondent acknowledged that the reason that he had grabbed her by her wrists was because he wanted her to get control of herself. Based on Respondent's own testimony, he engaged in a physical altercation with Person A and the physicality he engaged in was not solely for self defense.

Respondent is found Guilty.

Specification No. 2

It is charged that having been involved in a police incident at his home on June 8, 2010, Respondent thereafter, between June 8, 2010 and July 28, 2010, failed to promptly notify the Operations Unit about the occurrence of this police incident.

Respondent admitted that on June 8, 2010, [REDACTED] PD police officers appeared at his residence and told him that they were responding to a 911 call. Person A told Diaz that she had called 911 because she and Respondent had argued. Although Respondent recalled that he had told the [REDACTED] PD officers that his daughter was learning about 911 in school and that perhaps she had called 911, the [REDACTED] PD response report to this 911 call indicates that Respondent reported to the officers that he had dialed 911 in error (DX 2). Whatever the circumstances, Respondent was required to promptly notify the Operations Unit that police had responded to his residence as the result of a 911 call made from the residence.

Respondent is found Guilty.

PENALTY

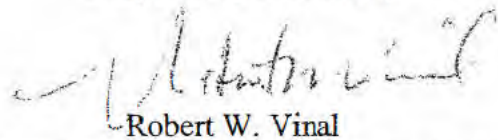
In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 N.Y. 2d 222 (1974). Respondent was appointed on July 28, 1987. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

The Assistant Department Advocate recommended that Respondent forfeit ten vacation days.

With regard to Respondent's misconduct on July 28, 2010, the record establishes that the charges Respondent was arrested on regarding his physical altercation with Person A were dismissed and that this incident resulted in no injury to anyone.

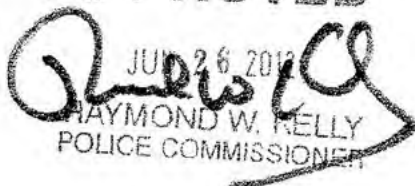
Having examined the unique facts and circumstances surrounding Respondent's misconduct and having examined Respondent's evaluations, his Department Recognition Summary, and his lack of a prior formal disciplinary record, I recommend that the Respondent forfeit ten vacation days.

Respectfully submitted,



Robert W. Vinal

Assistant Deputy Commissioner - Trials

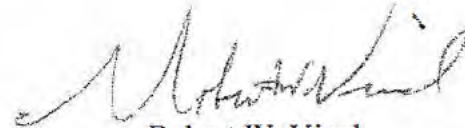
APPROVED
JUN 26 2012

RAYMOND W. KELLY
POLICE COMMISSIONER

POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner - Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
SERGEANT ROBERT PATELLI
TAX REGISTRY NO. 893500
DISCIPLINARY CASE NO. 2010-2293

The Respondent received an overall rating of 4.0 on his 2009 performance evaluation, 4.5 on his 2008 evaluation, and 4.0 on his 2007 evaluation. He has been awarded one Commendation, 13 Meritorious Police Duty medals, and 25 Excellent Police Duty medals. [REDACTED] He has no prior formal disciplinary record and no monitoring records.

For your consideration.



Robert W. Vinal
Assistant Deputy Commissioner Trials